IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11493 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 :NO

RAO SWETA LOKNATH

Versus

EXECUTIVE SECRETARY

Appearance:

MR PK PANCHOLI for Petitioner

MR RV DESAI APP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/02/2001

ORAL JUDGEMENT

1. "Whether a person born, brought up and domiciled in the State of Gujarat and belonging to a scheduled caste would be disentitled to the benefits as such only on the ground that his or her parents hail from another

State where also they were members of a Scheduled Caste?" is the issue arising in this petition under Articles 14, 16 and 226 of the Constitution.

2. The petitioner was born in 1981 in Gujarat to the parents who had earlier in 1978 migrated from the State of Uttar Pradesh. The family belongs to Chamar community which is a specified scheduled caste in relation to the State of Uttar Pradesh as well as the State of Gujarat. The petitioner who successfully passed the examination of Standard 12 in science stream from a convent high school in Bhavnagar, applied for admission in medical/engineering college and was told that she was not entitled to admission on the seat reserved for scheduled caste candidates and her case was referred to the Director, Scheduled Caste Welfare, State of Gujarat, the respondent No.3. The rejection of her claim by the said Director is the cause of this petition.

3. The impugned decision and order, after relating the reasons in detail, held that the petitioner and her father having failed to prove that they were domiciled in Gujarat, she was not entitled to the benefits of being a member of the scheduled caste in Gujarat. The order mainly relied upon the reason that as on the date of the Constitution (Scheduled Castes) Order, 1950, the parents and family of the petitioner were the residents of Uttar Pradesh and even after migration of the family and subsequent birth of the petitioner, they could claim the benefits only in the State of Uttar Pradesh.

4. Article 341 of the Constitution empowers the President to specify the castes which shall be deemed to be Scheduled Caste in relation to a particular State. The Constitution (Scheduled Castes) Order, 1950 specifies the castes listed in various parts of the schedule to that Order, who shall, in relation to the States to which those parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them in those parts of the Schedule. Chamar caste is found both in Part IV (Gujarat) and Part XVIII (Uttar Pradesh). The Ministry of Home Affairs has issued a circular letter No.35/1/72-RU (SCTU) dated 2.5.1975 the enclosure to which indicates the points required to be observed in issuing Scheduled Castes and Scheduled Tribes certificates. The first guideline in the said letter reads as under:

" 1. General (Applicable in all cases):

Where a person claims to belong to a Scheduled Castes and Schedules Tribes by birth, it could be verified:-

(i) that the person and his parents actually belong to the community claimed;

(ii) that this community is included in the Presidential Orders specifying the Schedules Castes/Scheduled Tribes in relation to the concerned State;

(iii) that the person belongs to that State and to the area within that State in respect of which the community has been scheduled;

(iv) if the person claims to be a Scheduled Caste, he should profess either the Hindu or Sikh religion;

(v) if the person claims to be a Scheduled Tribe, he may profess any religion."

According to the second guideline in the aforesaid letter, where a person migrates from one State to another, he can claim to belong to a Scheduled Caste or Scheduled Tribe only in relation to the State to which he originally belonged and not in respect of the State to which he is migrating.

4.1 The respondents have relied upon the clarification dated 22.3.1977 issued by the Ministry of Home Affairs, Government of India, on which the impugned order is based. The relevant part of the said communication dated 22.3.1977 reads as under:

"As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and

Scheduled Tribes in relation to that State or Union Territory from time to time. The inter-State area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the

> Scheduled Caste or Scheduled Tribe status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/Union Territories may not both be treated to belong to Scheduled Caste/Tribe or vice versa. Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the liberal or ordinary sense of the word. On the other hand it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place or abode at the time of the notification of the Presidential Order applicable in his case, say for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that order in relation to his State/Union Territory. But he cannot be treated as such in relation to the place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order."

The communication further states that, in case of persons born after the promulgation of the Presidential Order, the place of residence for the purpose of acquiring the status of Scheduled Caste or Scheduled Tribe shall be the place of permanent residence of the parents of such persons at the time of promulgation of the Presidential Order under which the claim is made.

5. The learned Assistant Government Pleader appearing for the respondents relied upon the provisions and guidelines as above and sought to support the impugned order with the judgment of the Constitution Bench of the Supreme Court in MARRI CHANDRA SHEKHAR RAO v. DEAN, SETH G.S.MEDICAL COLLEGE & ORS. [1990 (3) SCC 130]. In the facts of that case, the petitioner who was born in the State of Andhra Pradesh in a community recognised as Scheduled Tribe, had come to live in Bombay since the age of 9 years and was denied admission to MBBS course in Maharashtra as a Scheduled Tribe candidate. The question was whether one who was recognised as a Scheduled Tribe in the State of his original birth continued to have the benefits of the privileges in the State of migration or where he later went and the same was decided in the negative. As expressly stated in the

judgment, the question of the petitioner's right to be admitted as a domicile of Maharashtra did not fall for consideration.

However, the observation made by their Lordships in the said judgment contains illuminating discussion. It is observed in para-10 that "it has to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere.... Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas." It is further observed in para-13 that "Article 341 as well as Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof.... The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere of Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection."

Thus, the ratio of the said judgment is based upon a factual matrix where a person belonging to Scheduled Caste/Tribe in one State claimed to carry the protection in another State where the community to which he belongs was not a Scheduled Caste or Tribe. The aforesaid judgment expressly overrules the judgments of this Court in KUM. MANJU SINGH v. DEAN, B.J.MEDICAL

COLLEGE [AIR 1986 GUJ.175] and GHANSHYAM KISAN BORIKAR v. L.D.ENGINEERING COLLEGE [AIR 1987 GUJ. 83].

6. In a subsequent judgment of the Constitution Bench of the Supreme Court in ACTION COMMITTEE ON ISSUE OF CASTE CERTIFICATE TO SCHEDULED CASTES AND SCHEDULED TRIBES IN THE STATE OF MAHARASHTRA AND ANOTHER v. UNION OF INDIA AND ANOTHER [(1994) 5 SCC 244], the Division Bench judgment of this Court in STATE OF GUJARAT v. R.L.PATEL [AIR 1992 GUJ. 42], which took the view that a person belonging to a Scheduled Tribe in one State was entitled to the benefits of reservation in another State where he migrates and where his tribe is also a Scheduled Tribe, was expressly overruled. The Supreme Court was expressly approached for an authoritative pronouncement to introduce a uniform pattern in regard to the issuance of certificate to the persons belonging to the Scheduled Castes/Tribes in view of the difficulties experienced in securing such certificate on account of the instructions dated 22.3.1977 referred to earlier and the subsequent communications. The following observations in paragraph 16 in the said judgment have to be noted in the context of the case in hand:

> "Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution....."

In the result, the petition was rejected by the Constitution Bench confirming the view taken earlier in MARRI CHANDRA case (supra).

7. Thus, practically, the issue raised in the present petition stands resolved by the latter

Constitution Bench judgment of the Supreme Court. The birth, residence and domicile of the petitioner in Gujarat and the fact that the community to which she belongs is also specified to be a Scheduled Caste in relation to the State of Gujarat are not relevant or decisive. Under the scheme of the constitutional provisions of Articles 341 and 342, what may be specified to be Scheduled Castes/Tribes are the castes, races, tribes or tribal communities or parts of or groups within such castes, races, tribes or tribal communities in respect of particular States. Accordingly, the Presidential Order specifies such castes/tribes which shall be deemed to be Schedules Castes/Tribes so far as regards members thereof residents in the localities specified in relation to them in particular States. Thus, what is specified is the caste/tribe in relation to particular States for the benefit of the members of such castes who are residents in the localities specified in relation to them. In terms of concrete facts of this case, it translates into a proposition that the petitioner as a member of Chamar caste shall be deemed to be a member of the Scheduled Caste in Uttar Pradesh as a member of that community resident in the locality specified in relation to it as the child of the parents permanently resident of that locality in Uttar Pradesh. But such child would not belong to the Chamar caste in Gujarat in relation to which the Presidential Order was promulgated. In such cases, the place of permanent residence of not only the child but his/her parents at the time of the notification of the Presidential Order assumes special significance and becomes decisive. In this view of the matter, not only the parents of the petitioner did not carry with them the benefits of being a member of the Scheduled Caste in relation to Gujarat upon migration to Gujarat but the petitioner herself also cannot claim such benefits in Gujarat.

8. In the result, in the facts and for the reasons discussed hereinabove, the petitioner is not entitled to the reliefs prayed by her and, therefore, the petition is rejected. Rule is discharged with no order as to costs.

Sd/-

26.2.2001 (D.H.Waghela, J.)

(KMG Thilake)